

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION TWENTY-FIVE

AUTOMOTIVE COMPONENTS HOLDINGS, LLC
Employer

and

Case 25-RC-10309

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA, UAW
Petitioner

SUPPLEMENTAL DECISION ON CHALLENGED BALLOTS

Pursuant to a Decision and Direction of Election, an election was conducted on January 5, 2006, among certain employees of the above-named Employer to determine whether or not they desired to be represented by the Petitioner for the purposes of collective bargaining.¹

At the election the Petitioner challenged the ballots of employee James Fox on the basis that he is a supervisor with the title of Lead Controls Engineer, Max Gehrich on the basis that he is employed as a Quality Manufacturing Planning Specialist, a classification excluded from the bargaining unit, and April Mason-Spencer on the basis that she reports to the Plant Manager in her position as a Lean Coordinator. Therefore, the Petitioner contends that these three employees lack a community of interest with unit members and are ineligible to vote.

Also during the election, the Employer challenged the ballots of Industrial Engineers Stuart Anderson, Wayman Coffey, and Doug Tatom, as well as the ballots of Product Design Engineers Paul Bechtold, Corey Bounds, William Dick, Bernadette Gordon, Steve Leo, Brian Osbourn, Mike Porter, Dave Skeem, Eric Villiger, and Robert Whitehouse. The Employer contended that the employees classified as Industrial Engineers and Product Design Engineers do not share a community of interest

¹ The appropriate unit as set forth in Section II, Decision, of the Decision and Direction of Election is as follows:

All full-time and regular part-time manufacturing engineers, environmental health engineers, controls engineers, packaging engineers, industrial engineers, quality engineers, product design group employees, including product design test technicians, product design test engineers, and product design engineers employed by the Employer at its Indianapolis, Indiana, facility; BUT EXCLUDING all manufacturing planning specialists, facilities engineers, temporary employees, employees covered by separate collective bargaining agreements, office clerical employees, guards and supervisors as defined in the Act, and all other professional and hourly employees.

with unit members. Additionally, the Employer argued that in the case of the Industrial Engineers, their inclusion in the bargaining unit would create a conflict of interest based upon their job responsibilities. Therefore, the Employer contends that these thirteen employees are ineligible to vote.

Also during the conduct of the election, the Board Agent challenged the ballots of employees Kelly Cook, Brian Wink and Kelly Baker on the basis that these employees were not named on the eligibility list.

The challenged ballots are sufficient in number to affect the results of the election.²

Following an investigation,³ and for the reasons discussed more fully below, I am overruling the challenge to the ballots of Industrial Engineers Stuart Anderson, Wayman Coffey and Doug Tatom, as well as the ballots of Product Design Engineers Paul Bechtold, Corey Bounds, William Dick, Bernadette Gordon, Steve Leo, Brian Osbourn, Mike Porter, Dave Skeem, Eric Villiger, and Robert Whitehouse. Further, I am sustaining the challenge to the ballot of Kelly Baker. Finally, the ballots of Kelly Cook, Brian Wink, James Fox, Max Gehrich, and April Mason-Spencer will be addressed in greater detail in a supplemental decision if they remain determinative following the issuance of a revised tally of ballots.

I. THE CHALLENGED BALLOTS

A. Industrial Engineers - Stuart Anderson, Wayman Coffey and Doug Tatom

1. Contentions of the Parties

The Employer contends that the Industrial Engineers do not share a community of interest with the other classifications deemed appropriate for inclusion in the bargaining unit and that a conflict of interest would be created, based upon certain responsibilities assigned to the Industrial Engineers, should the Industrial Engineers be included in the unit. The Employer further contends that the collective bargaining agreement between the Employer and the Petitioner prohibits the Petitioner from organizing Industrial Engineers. Finally, the Employer points to the fact that the Employer’s dispute with the Petitioner—over whether or not the Petitioner is at liberty to organize Industrial Engineers

² The Tally of Ballots made available to the parties at the conclusion of the election shows the following results:

Approximate number of eligible voters	61
Number of void ballots	0
Number of votes cast for the Petitioner	15
Number of votes cast against participating labor organization	29
Number of valid votes counted	44
Number of challenged ballots	19
Number of valid votes counted plus challenged ballots	63

³ Both parties were requested to, and did furnish various evidence in support of their respective positions.

working for the Employer—was grieved and submitted to an Umpire on January 3, 2006. Asserting a change in circumstances, the Employer contends that the Board is required to accept the Employer's challenges of the Industrial Engineers and to postpone its ruling on those challenges pending the Umpire's decision.

The Petitioner takes the position that the ballots of the Industrial Engineers should be opened and counted inasmuch as the Regional Director's Decision and Direction of Election found that the Industrial Engineers were properly included in the unit deemed appropriate. The Petitioner further pointed out that on January 4, 2006, the Board denied the Employer's Request for Review, holding that the Request for Review advanced no substantial issues warranting review.

2. Analysis and Conclusion

During the initial representational hearing held to determine the composition of the unit, the Employer failed to argue that the Industrial Engineers should be excluded from the petitioned-for unit based upon contractual language between the Employer's Parent Company, Ford Motor Company, and the Petitioner. Thereafter, on December 2, 2005, the undersigned issued a Decision and Direction of Election. On Appeal to the Board, the Employer, for the first time, argued that the collective bargaining agreement between the Employer and the Union precluded the Union from organizing the Industrial Engineers. As stated above, the Employer submitted the matter to arbitration on January 3, 2006.

The National Labor Relations Board has repeatedly held that a party is precluded from relitigating a unit issue, or advancing a new legal theory, after having failed to raise the argument during the initial representational proceeding. See *Allied Trades Council*, 342 NLRB No. 103 (2004). Additionally, the United States Supreme Court has held that matters of representation decided by the National Labor Relations Board are to take precedence over arbitral decisions. See *Carey v. Westinghouse Electric Corporation*, 375 U.S. 261, 272 (1964). Finally, the National Labor Relations Board's Casehandling Manual, Part Two, Representation Proceedings at Section 11338.7, Specific Exclusions and Inclusions in Decision, states "Persons in job classifications specifically included by the Decision and Direction of Election should be given a ballot and permitted to vote without challenge based upon classification, unless there have been changed circumstances."

Inasmuch as the contractual provision upon which the Employer bases its argument of changed circumstances existed prior to the date of the representational hearing and because the appropriate unit had been determined in the Decision and Direction of Election, the ballots of the Industrial Engineers should not have been challenged. Accordingly, the ballots of Industrial Engineers Stuart Anderson, Wayman Coffey, and Doug Tatom, should properly be opened and counted.

B. Product Design Engineers - Paul Bechtold, Corey Bounds, William Dick, Bernadette Gordon, Steve Leo, Brian Osbourn, Mike Porter, Dave Skeem, Eric Villiger, and Robert Whitehouse

1. Contentions of the Parties

The Employer contends that the Product Design Engineers do not share a community of interest with the other classifications deemed appropriate for inclusion in the bargaining unit. As with the

Industrial Engineers, the Petitioner takes the position that the ballots of the Product Design Engineers should be opened and counted based upon the decisions of the Regional Director and the Board.

2. Analysis and Conclusion

The December 2, 2005, Regional Director's Decision and Direction of Election found that the Product Design Engineers were included in the unit deemed appropriate. Thereafter, on January 6, 2006, the Board denied the Employer's Request for Review, holding that the Request for Review advanced no substantial issues warranting review.

As noted above, Section 11338.7, Specific Exclusions and Inclusions in Decision, of the National Labor Relations Board's Casehandling Manual, Part Two, Representation Proceedings, states "Persons in job classifications specifically included by the Decision and Direction of Election should be given a ballot and permitted to vote without challenge based upon classification, unless there have been changed circumstances." Thus, the inclusion of the Product Design Engineers in the unit had been properly decided prior to the election. As such, the ballots of the Product Design Engineers should not have been challenged and the ballots of Paul Bechtold, Corey Bounds, William Dick, Bernadette Gordon, Steve Leo, Brian Osbourn, Mike Porter, Dave Skeem, Eric Villiger, and Robert Whitehouse should, therefore, be properly opened and counted.

C. Kelly Baker

Kelly Baker's name was stricken from the *Excelsior* list at the pre-election conference. The Employer and the Petitioner agreed that Baker had been promoted out of the unit and into a supervisory position. Based on this agreement, Baker's name was removed from the list of eligible voters. Due to his elimination from the list, his ballot was challenged by the Board Agent.

Based upon the parties' agreement that Kelly Baker was not a member of the unit on the day of the election, the challenge to his ballot is sustained and it will be neither opened nor counted.

D. Kelly Cook, Brian Wink, James Fox, Max Gehrich, & April Mason-Spencer

Although the parties have taken differing positions with regard to whether or not the ballots cast by employees Kelly Cook, Brian Wink, James Fox, Max Gehrich, and April Mason-Spencer should be opened and counted, their ballots may not remain determinative following the count of the above-named employees classified as Industrial Engineers and Product Design Engineers.

II. DECISION AND ORDER

For the reasons discussed above under the sections entitled "Industrial Engineers" and "Product Design Engineers," it is concluded and ordered that the challenge to the ballots of Industrial Engineers Stuart Anderson, Wayman Coffey, and Doug Tatom, and Product Design Engineers Paul Bechtold, Corey Bounds, William Dick, Bernadette Gordon, Steve Leo, Brian Osbourn, Mike Porter, Dave Skeem, Eric Villiger, and Robert Whitehouse be overruled and that these ballots be opened and

counted at a time and place to be designated by the Regional Director. For the reasons discussed above under the section entitled "Kelly Baker," it is concluded and ordered that the challenge to the ballot of Kelly Baker be sustained and that his ballot be neither opened nor counted.

It is further ordered that a Revised Tally of Ballots shall be served on the parties following the count of the ballots cast by those employees classified as Industrial Engineers and Product Design Engineers. Should the Revised Tally of Ballots determine the outcome of the election, an appropriate certification will also be issued.

In the alternative, should the ballots of Kelly Cook, Brian Wink, James Fox, Max Gehrich and April Mason-Spencer remain determinative following the issuance of the Revised Tally of Ballots, a Second Supplemental Decision on Challenged Ballots shall issue, addressing in greater detail their eligibility to vote. If necessary, a Notice of Hearing will also be issued.

III. APPEAL PROCEDURE

Any party may, within fourteen (14) days from the issuance of this Report, file with the Board an original and eight (8) copies of its exceptions to the above findings and orders in accordance with Section 102.69 of the Board's Rules and Regulations. The exceptions should be filed with the Executive Secretary of the Board, National Labor Relations Board, 1099 14th Street N.W., Washington, D C 20570. Copies of the exceptions should also be immediately served upon each of the parties and the Regional Director.

Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its challenges and that is not included in this Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto, that a party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in this Report shall preclude a party from relying upon that evidence in any subsequent related unfair labor practice proceeding.

ISSUED AT Indianapolis, Indiana, this 27th day of January, 2006.

Rik Lineback
Regional Director
Region 25, National Labor Relations Board
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Indianapolis, Indiana 46204

RL/rc